

Message Text

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ACTION OES-06

INFO OCT-01 EUR-12 ISO-00 L-03 FEA-01 ACDA-10 AGRE-00
AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00
DLOS-06 DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02
TRSE-00 H-02 INR-07 INT-05 IO-13 JUSE-00 NSAE-00
NSC-05 NSF-02 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15
SAL-01 NSCE-00 SSO-00 USIE-00 INRE-00 /128 W
----- 026911 /14

O 132112Z DEC 76
FM USMISSION EC BRUSSELS
TO SECSTATE WASHDC IMMEDIATE 2569

UNCLAS EC BRUSSELS 12236

FOR OES AMBASSADOR RIDGEWAY, L - MARK FELDMAN

E.O. 11652: N/A
TAGS: EFIS, EC, PLOS
SUBJECT: US/EC FISHERIES NEGOTIATIONS

FOLLOWING IS TEXT OF EC "NOTE" ON MANDATE ISSUES GIVEN US
GIFA DELEGATION ON DECEMBER 13: QUOTE BRUSSELS, 13 DECEMBER
1976. INFORMATION NOTE FOR THE UNITED STATES DELEGATION.
IN THE COURSE OF THE NEGOTIATIONS HELD BETWEEN 8-10
NOVEMBER 1976, THE UNITED STATES DELEGATION RAISED A
NUMBER OF QUESTIONS IN RESPECT OF THE PROPOSED US-EC
FISHERIES AGREEMENT, IN PARTICULAR AS REGARDS THE
WAY IN WHICH THE COMMUNITY WOULD ASSURE THAT THE
OBLIGATIONS ASSUMED WOULD BE MET.

IT MAY BE POINTED OUT THAT THE ISSUES RAISED
CONCERN MATTERS WHICH ARE FOR THE COMMUNITY TO DETERMINE
ACCORDING TO ITS INTERNAL PROCEDURES. AS THE UNITED
STATES GOVERNMENT WAS INFORMED OFFICIALLY, THROUGH THE
STATE NOW ACTING AS PRESIDENT OF THE COUNCIL, THE COUNCIL
OF THE EUROPEAN COMMUNITIES HAS AGREED THAT
NEGOTIATIONS SHOULD BE UNDERTAKEN WITH THE UNITED
STATES, TOGETHER WITH OTHER STATES IN WHOSE WATERS
COMMUNITY VESSELS ENGAGE IN FISHING, WITH A VIEW TO
CONCLUDING A FISHERIES AGREEMENT SUCH AS THAT NOW
ENVISAGED. THE COMMISSION, WHICH HAS BEEN ENTRUSTED
UNCLASSIFIED

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WITH THE NEGOTIATIONS, WOULD WISH TO RECALL THEREFORE,
ON BEHALF OF THE COMMUNITY, THAT THE COMMUNITY HAS,
IN ACCORDANCE WITH THE DECISION OF THE COUNCIL,
RECEIVED THE NECESSARY AUTHORITY TO UNDERTAKE THE

NEGOTIATIONS, TO CONCLUDE THE AGREEMENT, ASSUMING SATISFACTORY RESULTS TO BE ACHIEVED, AND TO TAKE THE REQUISITE STEPS TO ASSURE THAT ITS TERMS ARE IMPLEMENTED.

THE FOLLOWING NOTE IS ACCORDINGLY INTENDED MERELY TO PROVIDE BACKGROUND OR SUPPLEMENTARY INFORMATION REGARDING THE ISSUES RAISED BY THE UNITED STATES DELEGATION.

THUS THE QUESTION WAS PUT AS TO WHETHER THE CONCLUSION OF THE AGREEMENT BY THE COMMUNITY WOULD MEAN THAT THE COMMUNITY WOULD ACKNOWLEDGE ON BEHALF OF ITS MEMBER STATES THE FISHERIES MANAGEMENT AUTHORITY OF THE UNITED STATES AS SET FORTH IN THE UNITED STATES FISHERIES MANAGEMENT ACT (PL 94-265). IN REPLY IT MAY BE POINTED OUT THAT THE COMMUNITY IS AN ENTITY TO ITS OWN RIGHT, DISTINCT FROM ITS MEMBER STATES. THE CONCLUSION OF THE PROPOSED FISHERIES AGREEMENT WOULD THEREFORE MEAN THAT THE COMMUNITY AS SUCH WAS ACKNOWLEDGING THE UNITED STATES LEGISLATION. AN AGREEMENT CONCLUDED BY THE COMMUNITY IS, IN ALL ITS PARTICULARS, BINDING ON ALL MEMBER STATES, AS WELL AS ON THE COMMUNITY ITSELF. ARTICLE 228, PARAGRAPH 2, OF THE EEC TREATY PROVIDES THAT AGREEMENTS CONCLUDED BY THE COUNCIL, AFTER NEGOTIATION BY THE COMMISSION, "SHALL BE BINDING ON THE INSTITUTIONS OF THE COMMUNITY AND ON MEMBER STATES". THE PURPOSE OF THIS CLAUSE IS TO PROVIDE LEGAL SECURITY FOR OTHER PARTIES. EVEN THOUGH NO FORMAL ACKNOWLEDGEMENT WAS MADE ON THEIR BEHALF, MEMBER STATES WOULD THEREFORE, PURSUANT TO THE ARTICLE, BE BOUND BY AN AGREEMENT ENTERED INTO BY THE COMMUNITY AND IN WHICH THE ACT WAS ACKNOWLEDGED.

QUESTIONS WERE ALSO RAISED AS TO WHETHER THE COMMUNITY CAN ACTUALLY ASSUME THE VARIOUS OBLIGATIONS SET OUT IN THE AGREEMENT AND HOW IN PRACTICE IT WOULD UNCLASSIFIED

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PROPOSE TO ASSURE THAT NATIONALS AND VESSELS OF MEMBER STATES FISHING UNDER THE AGREEMENT FULLY RESPECTED ITS TERMS. THE ISSUE OF THE COMPETENCE OF THE COMMUNITY TO ACCEPT THE OBLIGATIONS HAS ALREADY BEEN REFERRED TO ABOVE. THE PERTINENT COUNCIL DECISION WAS ADOPTED FOR THE PURPOSE OF NEGOTIATING AND, ASSUMING A SATISFACTORY RESULT TO BE OBTAINED, CONCLUDING, A FISHERIES AGREEMENT WITH THE UNITED STATES SUCH AS THAT NOW ENVISAGED, CORRESPONDING TO THE MATTERS COVERED BY THE 1976 FISHERIES MANAGEMENT ACT.

AS REGARDS THE APPLICATION OF THE AGREEMENT

ON THE COMMUNITY SIDE, IT MAY BE EMPHASIZED THAT AGREEMENTS CONCLUDED BY THE COMMUNITY ARE BINDING ON THE COMMUNITY AND ITS MEMBER STATES, AS EXPLAINED ABOVE, AND ARE DIRECTLY APPLICABLE TO NATIONALS OF MEMBER STATES WHERE THE SUBJECT-MATTER SO REQUIRES. THUS SINCE THE COMMUNITY AND ITS MEMBER STATES WOULD BE BOUND AND OPERATORS WOULD BE UNDER A DIRECT OBLIGATION IN APPROPRIATE CASES, FULL LEGAL ASSURANCE WOULD BE PROVIDED TO THE OTHER PARTY.

HAVING REGARD TO THE RANGE OF STEPS REQUIRED FOR THE PURPOSES OF IMPLEMENTATION, THE COMMUNITY COULD ADOPT, FURTHERMORE, AN INTERNAL INSTRUMENT PROVIDING FOR THE ESTABLISHMENT OF APPROPRIATE SUPERVISORY MECHANISMS AND LEGAL PROCEDURES. THUS AS REGARDS THE QUESTION OF THE MEASURES TO BE TAKEN IN THE EVENT THAT FISHERMEN DID NOT OBSERVE THE PROVISIONS OF THE AGREEMENT, THE INTERNAL COMMUNITY INSTRUMENT COULD PROVIDE FOR SANCTIONS. ACCORDINGLY, IF A CASE SHOULD ARISE IN WHICH A FISHING VESSEL FROM A MEMBER STATE DID NOT, FOR EXAMPLE, PAY A FINE, THE PARTICULAR OPERATOR WOULD NOT ONLY BE SUBJECT TO SUCH FURTHER MEASURES AS THE UNITED STATES MIGHT IMPOSE BUT ALSO TO POSSIBLE SANCTIONS ON THE COMMUNITY SIDE. UNQUOTE.HINTON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 16 SEP 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, FISHING RIGHTS, AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976ECBRU12236
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D760459-0483
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761293/baaaesdl.tel
Line Count: 136
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: schwenja
Review Comment: n/a
Review Content Flags:
Review Date: 10 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 JUN 2004 by hattaycs>; APPROVED <17 AUG 2004 by schwenja>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: US/EC FISHERIES NEGOTIATIONS
TAGS: EFIS, PLOS, EC, EEC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006